



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re Patent Application of:

Eric Polesuk

Serial No.: 10/072,528

Filing Date: February 8, 2002

For: READY TO USE  
HAIRCOLORING FOIL

Examiner: S. Willatt

Dated: May 30, 2006

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313

**SECOND DECLARATION**

1. I, Eric Polesuk, President and CEO of Product Club Corp, and inventor of the pending patent application Serial No. 10/072,528, do hereby declare the following:
2. Product Club began selling the pop-up foil described in the above patent application in the fourth quarter of 2001. Prior to this time, Product Club had been selling roll foil and pre-cut foil to the Beauty Industry. Roll foil is defined as foil that is on a roll that can be cut when needed and used for hair coloring applications. Pre-cut foil is defined as foil that is stacked, one sheet on top of another, much like a deck of playing cards, which can then be used for haircoloring applications.
3. The differences between the roll foil, pre-cut foil and pop-up foil all relate to the method in which they are dispensed, and then applied to the hair, which is directly related to the claimed invention.

4. The claims of the present invention which relate to the pop-up foil relate to removing a first sheet of hair foil from the pop-up dispenser, the first sheet of hair foil ranging in width from 3.5-6". The sheet of hair foil has a lead portion and a trail portion. The lead portion of the sheet of hair foil extends through a dispensing orifice through an elevation above the dispensing unit. The trailing portion of the first hair foil sheet overlaps with a lead portion of the next hair foil sheet to be dispensed. By withdrawing the first sheet of hair foil, the next hair foil sheet is pulled through the orifice of the dispenser, and is awaiting further use. The first hair foil sheet can then be applied directly to a person's hair.

5. With the roll foil, the foil must be cut to the appropriate length and then placed into a person's hair for haircoloring applications. This process requires multiple steps that are not required with the pop-up foil method.

6. With the pre-cut foil, the first sheet, and each subsequent sheet of foil, must be separated from the stack of foil before being applied to a person's hair. Therefore, the second sheet, and each subsequent sheet, is not ready for use. This process requires multiple steps that are not required with the pop-up foil method.

7. Therefore, the method described in paragraph 4 above for Product Club's pop-up foil creates a convenient and time saving way of dispensing hair foil which has led to Product Club's success.

8. From 2001 until today, the market share for Product Club's pop-up foil has gone from 0% in 2001 to almost 60% in 2005 of the foil being sold by Product Club to the Beauty Industry. Product Club's pop-up foil sales have almost tripled in size since 2002. The other foil products such as roll foil and pre-cut foil have not grown to the same extent.

9. Since the only difference in the pre-cut foil, the roll foil and the pop-up foil is the method in which they are dispensed and placed in the hair, Product Club's pop-up foil market share and profitability must be directly linked to the method in which the pop-up foil is being dispensed and placed in the hair.

10. All of the statements made herein are of my own knowledge and are true, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application and any patent issuing thereon, or any patent to which this verified statement is applied.

May 30, 2006  
Date of Signature

By: 

Eric Polesuk